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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,716	02/21/2006	James Kenneth McAlpine	M-0930.02	3308

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EXAMINER
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MAHONE, KRISTIE ANNETTE

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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08/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/556,716

Applicant(s)

MCALPINE, JAMES KENNETH

Examiner

Kristie A. Mahone

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3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the **“latch means”** recited in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Also, the drawings fail to show the **“compression ring,” “stop member”, and “cam track”** as described in the specification. (See p. 8). Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office Action.

***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Claim 18 specifies that the stem may be depressed by a force of five pounds, or less. However, the specification fails to mention a particular depressive force, as claimed. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is insufficient antecedent basis for "the surface" in claim 1. Presumably, claim 14 should depend from claim 13 (and will be so treated on the merits).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1, 5-19, 23-25, and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (6,880,179).

Regarding claims 1 and 5-14, Wang shows a plug for a waste outlet of a sink (1) including a seal located on an upper portion (52), a stem (41,42) which is freely received in the waste outlet (12) and coupled to the seal, and a removable, basket strainer (2) operatively associated with the seal and stem. The stem is adjustable in length in response to a compressive force, allowing the seal to selectively seal and open the waste outlet. (Fig. 3-5; Col. 4, lines 28-32). The strainer is located below the seal within the waste outlet and is shaped to correspond to the shape of the opening in the waste outlet (12). Also, there is a surface (button 51) for contact with a user's hand, formed to permit grasping. The surface is provided on a removable portion of the plug (note joint 427) which retains the seal (52) on the stem (Fig. 3). In use, the surface substantially conceals the waste outlet opening (See Fig. 5).

Regarding claims 15-18, note that stem includes two substantially concentric portions (41,42) which are biased to a first length (Figs 3,4). A latch means (44,421) holds the portions in a second length against the bias (Fig. 5, Col. 4, lines 8-12). Application and release of a downward force (which may be less than 5lbs) extends and contracts the stem.

Regarding claim 19, as evident from inspection of Figures 4 and 5, the seal comprises a resilient material.

Regarding claims 23-25, refer to the discussion of claims 1 and 5-14 above.

Regarding claim 30, note that the strainer is fixed relative to the seal (See Fig. 3).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4,6-18,20,21,23, and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuschera (4,339,832) in view of Hiertz (3,588,928).

Regarding claim 1, Cuschera shows a waste outlet plug including a seal (32) and a stem (33,19) which is coupled to the seal and received by a waste outlet (11) (Figs. 1-4). The length of the stem is adjustable in response to a compressive force, allowing the seal to selectively engage with a portion of the waste outlet (as at 14) to open and seal the outlet (See Figs 3-4; Col. 3, line 25 – Col. 4, line 5). Cuschera lacks a strainer associated with the seal or stem, as claimed. Hiertz, however, shows a waste plug assembly with a strainer (14) located above the seal (16) (Fig. 2, Col. 2, lines 30-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Cuschera's plug assembly by fixing a strainer above the seal, as shown by Hiertz, to prevent waste particles from entering and clogging the drain.

Regarding claims 2-4, note that the stem (of the apparatus as combined) defines a vertical axis, extending down from the seal which is disposed within the waste outlet (11)

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(See Cuschera, at Fig. 3). Also, the strainer is located above (upwardly) of the seal (Hiertz at Fig. 2) and located at an uppermost portion of the plug.

Regarding claim 6, the plug is used in combination with a sink.

Regarding claims 7, 8, and 24, note that the strainer is a removable basket, which is shaped to correspond to the shape of the waste outlet.

Regarding claims 9-14, there is a surface (button 31) for contact with the user's hand, formed to permit grasping. (Cuschera, Figs 2,3; Col. 3, lines 25-35). The surface is provided on a removable portion of the plug which retains the seal (32) on the stem (Fig. 3). In use, the surface substantially conceals the waste outlet.

Regarding claims 15-18, the stem includes two substantially concentric portions (19,33) biased to first length, as shown in Figure 4. A latch means (36) holds the portions in a second length against the bias (Cuschera, Col. 3, lines 20-51). The stem extends and contracts in response to the application and release of a downward force which may be approximately five pounds.

Regarding claims 20-21, 23, and 25-29 note that the stem (33,19) is freely received in and secured at the center of the waste outlet via a threaded member (20) (Cuschera, Fig. 3). The threaded member engages with a correspondingly threaded member on the waste outlet (as at 18). The waste outlet has an inner portion ("drain body", 11) and an outer portion ("drain opening" not shown) which are centrally secured relative to each other (as at 13) (Cuschera, Col. 2, lines 10-20). The outer circumference of the strainer and the surrounding inner surface of the waste outlet of

the apparatus as combined would form an annular flow gap when the seal is moved to an open position (See Cuschera at Fig. 4, Hiertz at Fig. 3).

Regarding claim 30, note that the strainer of the apparatus as combined is fixed relative to the seal.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cuschera in view of Hiertz (as discussed above) and further in view of Richards (3,525,105).

Cuschera and Hiertz, as combined, lack a non-threaded sleeve, as claimed. Richards, however, shows a waste plug assembly with a non-threaded sleeve attachment (32) engaging the stem (Fig. 4). Therefore, it would have been obvious to a person ordinary skill in the art at the time the invention was made to have provided the stem of the apparatus as combined with a non-threaded sleeve, as shown by Richards, to provide a means for securing the plug to waste outlets lacking a threaded internal portion.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chen (6,219,861), and Jones et al. (3,428,295) cited to shown similar plug assemblies with push-actuation.

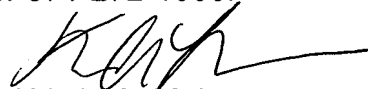
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is (571) 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M..



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristie A. Mahone  
Examiner  
Art Unit 3751

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